IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 708 OF 2002

M/s. Hindustan Petroleum
Corporation Limited .. Appellant

v/s.

1. Income-tax Officer,
Companies Circle 1(2), Mumbai
& anr. .. Respondents

Mr.S.J.Mehta for appellant.

Mr.R.V.Desai with Ms.S.V.Bharucha i/by
Mr.P.Kapurfor appellant.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 6th September, 2004

P.C.

Heard Mr.S.J.Mehta, the learned counsel for the assessee.

2. Relying upon the judgment of the Supreme Court in the case of Jogta Coal Co.Ltd. v. Commissioner of Income-Tax, West Bengal, 36 ITR 521 and the judgments of the Calcutta High Court and Madras High Court in the cases of Commissioner of Income Tax v. Hooghly Mills Co.Ltd., 131 Taxman 724 and Commissioner of Income Tax v. S.Natarajan, 149 CTR 326 respectively, the learned counsel for the assessee submitted that the proposed question of law arises in this appeal.

2. The Tribunal in the impugned order observed thus-

"7. In our opinion, the facts of the present case are different. If the asset is owned by the assessee and used for the purposes of business, the depreciation may be allowed on the actual cost or on the written down value of the asset. In the present case the actual cost of the asset was Nil. Nothing was placed before us to indicate the quantum of liability, which the assessee assumed qua the acquisition of cylinder and regulator. Assessee adopted the value of the cylinders and regulators ipse dixit. Actual cost of the cylinders and regulators, as per the Balance Sheet, is Nil. The fact that whether the assessee assumed any liability qua the cylinders and regulators, could be determined only after evaluating all assets and liabilities. This was not done. Assessee taken the value of cylinders and regulators by applying a self-serving method. The sanctity of that method was not explained. The benefit of depreciation was already given to the previous owner. There is no evidence on record to indicate that the alleged cost of cylinder and regulator, on which the assessee is claiming depreciation, was considered in the hands of the previous owner. More so, where entire business of an undertaking, together with its assets, including the depreciable assets and liabilities, was sold for a price without any item-wise earmarking, Section 41(2) cannot be invoked."

3. We do not find any infirmity in the order of the Tribunal.

4. The judgments cited by the learned counsel for the appellant have no application to the facts and circumstances of the present case.

5. No substantial question of law arises. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)